

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 1-32 are pending in the present application. Claims 8, 19, 26 and 31 are amended by the present amendment to correct minor informalities. No new matter is presented.

In the Office Action, Claims 1-32 are rejected under 35 U.S.C. § 102(e) as unpatentable over Sawada et al. (U.S. Pat. 7,039,546, herein Sawada).

Applicants respectfully traverse the outstanding grounds of rejection because Sawada (U.S. Pat. 7,039,546) is not prior art under 35 U.S.C. § 102(e) for a plurality of reasons.

The effective filing date of the present Application is February 7, 2006 by virtue of the priority claim under 35 U.S.C. § 371 to PCT/JP2006/302092. Sawada (U.S. Pat. 7,039,546) issued on May 2, 2006. This date is after the filing date of the present application (February 7, 2006). Thus, Sawada (U.S. Pat. 7,039,546) is not prior art under 35 U.S.C. §§ 102(a) or 102(b).

Furthermore, Sawada (U.S. Pat. 7,039,546) has **no** 35 U.S.C. § 102(e) prior art date. Sawada (U.S. Pat. 7,039,546) is a reference based on the national stage (35 U.S.C. § 371) of an International Application filed on or after November 29, 2000, which was **not** published in English under PCT Article 21(2). All references, whether the WIPO publication, the U.S. patent application publication, or the U.S. patent, of an international application that was filed on or after November 29, 2000 but was not published in English under PCT Article 21(2) have no 35 U.S.C. § 102(e) prior art date at all. According to 35 U.S.C. § 102(e), no benefit of the international filing date (nor any U.S. filing dates prior to the international application) is given for 35 U.S.C. § 102(e) prior art purposes if the International Application was published under PCT article 21(2) in a language other than English, regardless of whether the

international application entered the national stage.¹ The international application that Sawada (U.S. Pat. 7,039,546) is based upon is PCT/JP2004/002610, which was filed on March 3, 2004. Thus, Sawada (U.S. Pat. 7,039,546) has no 35 U.S.C. § 102(e) date.

Furthermore, 35 U.S.C. § 102(e) requires that for a granted patent to be used as the basis for a rejection, that the patent be **by another**. Applicants note that the inventors of the present application, and the inventors in Sawada (U.S. Pat. 7,039,546) **are the same** (i.e., Hiroshi Sawada, Ryo Mukai, Shoko Araki and Shoji Makino). Thus, the Sawada (U.S. Pat. 7,039,546) reference is also deficient as a reference under 35 U.S.C. § 102(e) in this regard.

As Sawada (U.S. Pat. 7,039,546) is not prior art, Applicants respectfully submit that the outstanding grounds of rejection are traversed.

Applicants note that PCT/JP2004/002610 was published under Article 21(2) in Japanese as WO 2004/079388 on September 16, 2004, and this publication date is less than a year prior to the Japanese priority date(s) of the present application. WO 2004/079388 is written in Japanese and Applicants representative has not studied this reference.

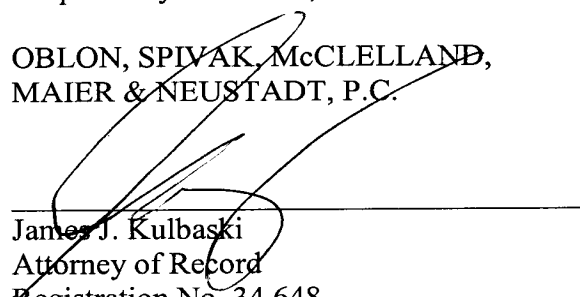
However, should the Office rely on a translation of WO 2004/079388 in a subsequent rejection, Applicants maintain the right to perfect priority to one or more of JP 2005-031824 filed February 8, 2005, JP 2005-069768 filed March 11, 2005 and/or JP 2005-166760 filed June 7, 2005. Perfecting priority to one or more of these applications would disqualify WO 2004/079388 as prior art under 35 U.S.C. § 102(a) because, as noted above, the inventors of WO 2004/079388 are the same as the present application, and therefore WO 2004/079388 is not **by others** as required under 35 U.S.C. § 102(a).

¹ 35 U.S.C. §102(e), and MPEP §706.02(f)(1) (see example 5 on page 700-34 and the flow chart on page 700-40 of MPEP, original 8th edition, August 2001, latest revision August 2006).

Consequently, in light of the above discussion and in view of the present amendment, the present application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



James J. Kulbaski
Attorney of Record
Registration No. 34,648

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/07)

Andrew T. Harry
Registration No. 56,959